

In the Senate of the United States,

December 22, 2018.

Resolved, That the bill from the House of Representatives (H.R. 1967) entitled “An Act to amend the Reclamation Project Act of 1939 to authorize pumped storage hydropower development utilizing multiple Bureau of Reclamation reservoirs.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Bureau of Reclamation*
3 *Pumped Storage Hydropower Development Act”.*

4 ***SEC. 2. AUTHORITY FOR PUMPED STORAGE HYDROPOWER***
5 ***DEVELOPMENT USING MULTIPLE BUREAU OF***
6 ***RECLAMATION RESERVOIRS.***

7 *Section 9(c) of the Reclamation Project Act of 1939*
8 *(43 U.S.C. 485h(c)) is amended—*

9 *(1) in paragraph (1), in the fourth sentence, by*
10 *striking “, including small conduit hydropower devel-*

opment” and inserting “and reserve to the Secretary the exclusive authority to develop small conduit hydropower using Bureau of Reclamation facilities and pumped storage hydropower exclusively using Bureau of Reclamation reservoirs”; and

(2) in paragraph (8), by striking “has been filed with the Federal Energy Regulatory Commission as of August 9, 2013” and inserting “was filed with the Federal Energy Regulatory Commission before August 9, 2013, and is still pending”.

**SEC. 3. LIMITATIONS ON ISSUANCE OF CERTAIN LEASES OF
POWER PRIVILEGE.**

(a) *DEFINITIONS.*—In this section:

(1) *COMMISSION.*—The term “Commission” means the Federal Energy Regulatory Commission.

(2) *DIRECTOR.*—The term “Director” means the Director of the Office of Hearings and Appeals.

(3) *OFFICE OF HEARINGS AND APPEALS.*—The term “Office of Hearings and Appeals” means the Office of Hearings and Appeals of the Department of the Interior.

(4) *PARTY.*—The term “party”, with respect to a study plan agreement, means each of the following parties to the study plan agreement:

(A) The proposed lessee.

1 (B) *The Tribes.*

2 (5) *PROJECT.—The term “project” means a pro-*
3 *posed pumped storage facility that—*

4 (A) *would use multiple Bureau of Reclama-*
5 *tion reservoirs; and*

6 (B) *as of June 1, 2017, was subject to a*
7 *preliminary permit issued by the Commission*
8 *pursuant to section 4(f) of the Federal Power Act*
9 *(16 U.S.C. 797(f)).*

10 (6) *PROPOSED LESSEE.—The term “proposed*
11 *lessee” means the proposed lessee of a project.*

12 (7) *SECRETARY.—The term “Secretary” means*
13 *the Secretary of the Interior.*

14 (8) *STUDY PLAN.—The term “study plan” means*
15 *the plan described in subsection (d)(1).*

16 (9) *STUDY PLAN AGREEMENT.—The term “study*
17 *plan agreement” means an agreement entered into*
18 *under subsection (b)(1) and described in subsection*
19 *(c).*

20 (10) *TRIBES.—The term “Tribes” means—*

21 (A) *the Confederated Tribes of the Colville*
22 *Reservation; and*

23 (B) *the Spokane Tribe of Indians of the*
24 *Spokane Reservation.*

1 (b) *REQUIREMENT FOR ISSUANCE OF LEASES OF*
 2 *POWER PRIVILEGE.*—*The Secretary shall not issue a lease*
 3 *of power privilege pursuant to section 9(c)(1) of the Rec-*
 4 *lamation Project Act of 1939 (43 U.S.C. 485h(c)(1)) (as*
 5 *amended by section 2) for a project unless—*

6 (1) *the proposed lessee and the Tribes have en-*
 7 *tered into a study plan agreement; or*

8 (2) *the Secretary or the Director, as applicable,*
 9 *makes a final determination for—*

10 (A) *a study plan agreement under sub-*
 11 *section (c)(2); or*

12 (B) *a study plan under subsection (d).*

13 (c) *STUDY PLAN AGREEMENT REQUIREMENTS.*—

14 (1) *IN GENERAL.*—*A study plan agreement*
 15 *shall—*

16 (A) *establish the deadlines for the proposed*
 17 *lessee to formally respond in writing to com-*
 18 *ments and study requests about the project pre-*
 19 *viously submitted to the Commission;*

20 (B) *allow for the parties to submit addi-*
 21 *tional comments and study requests if any as-*
 22 *pect of the project, as proposed, differs from an*
 23 *aspect of the project, as described in a*
 24 *preapplication document provided to the Com-*
 25 *mission;*

1 (C) *except as expressly agreed to by the par-*
2 *ties or as provided in paragraph (2) or sub-*
3 *section (d), require that the proposed lessee con-*
4 *duct each study described in—*

5 (i) *a study request about the project*
6 *previously submitted to the Commission; or*

7 (ii) *any additional study request sub-*
8 *mitted in accordance with the study plan*
9 *agreement;*

10 (D) *require that the proposed lessee study*
11 *any potential adverse economic effects of the*
12 *project on the Tribes, including effects on—*

13 (i) *annual payments to the Confed-*
14 *erated Tribes of the Colville Reservation*
15 *under section 5(b) of the Confederated*
16 *Tribes of the Colville Reservation Grand*
17 *Coulee Dam Settlement Act (Public Law*
18 *103–436; 108 Stat. 4579); and*

19 (ii) *annual payments to the Spokane*
20 *Tribe of Indians of the Spokane Reservation*
21 *authorized after the date of enactment of*
22 *this Act, the amount of which derives from*
23 *the annual payments described in clause (i);*

24 (E) *establish a protocol for communication*
25 *and consultation between the parties;*

1 (F) provide mechanisms for resolving dis-
2 putes between the parties regarding implementa-
3 tion and enforcement of the study plan agree-
4 ment; and

5 (G) contain other provisions determined to
6 be appropriate by the parties.

7 (2) *DISPUTES.*—

8 (A) *IN GENERAL.*—If the parties cannot
9 agree to the terms of a study plan agreement or
10 implementation of those terms, the parties shall
11 submit to the Director, for final determination
12 on the terms or implementation of the study
13 plan agreement, notice of the dispute, consistent
14 with paragraph (1)(F), to the extent the parties
15 have agreed to a study plan agreement.

16 (B) *INCLUSION.*—A dispute covered by sub-
17 paragraph (A) may include the view of a pro-
18 posed lessee that an additional study request sub-
19 mitted in accordance with paragraph (1)(B) is
20 not reasonably calculated to assist the Secretary
21 in evaluating the potential impacts of the
22 project.

23 (C) *TIMING.*—The Director shall issue a de-
24 termination regarding a dispute under subpara-
25 graph (A) not later than 120 days after the date

1 *on which the Director receives notice of the dis-*
 2 *pute under that subparagraph.*

3 (d) *STUDY PLAN.*—

4 (1) *IN GENERAL.*—*The proposed lessee shall sub-*
 5 *mit to the Secretary for approval a study plan that*
 6 *details the proposed methodology for performing each*
 7 *of the studies—*

8 (A) *identified in the study plan agreement*
 9 *of the proposed lessee; or*

10 (B) *determined by the Director in a final*
 11 *determination regarding a dispute under sub-*
 12 *section (c)(2).*

13 (2) *INITIAL DETERMINATION.*—*Not later than 60*
 14 *days after the date on which the Secretary receives the*
 15 *study plan under paragraph (1), the Secretary shall*
 16 *make an initial determination that—*

17 (A) *approves the study plan;*

18 (B) *rejects the study plan on the grounds*
 19 *that the study plan—*

20 (i) *lacks sufficient detail on a proposed*
 21 *methodology for a study identified in the*
 22 *study plan agreement; or*

23 (ii) *is inconsistent with the study plan*
 24 *agreement; or*

(C) imposes additional study plan requirements that the Secretary determines are necessary to adequately define the potential effects of the project on—

(i) the exercise of the paramount hunting, fishing, and boating rights of the Tribes reserved pursuant the Act of June 29, 1940 (54 Stat. 703, chapter 460; 16 U.S.C. 835d et seq.);

(ii) the annual payments described in clauses (i) and (ii) of subsection (c)(1)(D);

(iii) the Columbia Basin project (as defined in section 1 of the Act of May 27, 1937 (50 Stat. 208, chapter 269; 57 Stat. 14, chapter 14; 16 U.S.C. 835));

(iv) historic properties and cultural or spiritually significant resources; and

(v) the environment.

(3) OBJECTIONS.—

(A) IN GENERAL.—Not later than 30 days after the date on which the Secretary makes an initial determination under paragraph (2), the Tribes or the proposed lessee may submit to the Director an objection to the initial determination.

(B) *FINAL DETERMINATION.*—Not later than 120 days after the date on which the Director receives an objection under subparagraph (A), the Director shall—

(i) hold a hearing on the record regarding the objection; and

(ii) make a final determination that establishes the study plan, including a description of studies the proposed lessee is required to perform.

(4) *NO OBJECTIONS.*—If no objections are submitted by the deadline described in paragraph (3)(A), the initial determination of the Secretary under paragraph (2) shall be final.

(e) *CONDITIONS OF LEASE.*—

(1) *CONSISTENCY WITH RIGHTS OF TRIBES; PROTECTION, MITIGATION, AND ENHANCEMENT OF FISH AND WILDLIFE.*—

(A) *IN GENERAL.*—Any lease of power privilege issued by the Secretary for a project under subsection (b) shall contain conditions—

(i) to ensure that the project is consistent with, and will not interfere with, the exercise of the paramount hunting, fishing, and boating rights of the Tribes reserved

1 *pursuant to the Act of June 29, 1940 (54*
2 *Stat. 703, chapter 460; 16 U.S.C. 835d et*
3 *seq.); and*

4 *(ii) to adequately and equitably pro-*
5 *tect, mitigate damages to, and enhance fish*
6 *and wildlife, including related spawning*
7 *grounds and habitat, affected by the devel-*
8 *opment, operation, and management of the*
9 *project.*

10 *(B) RECOMMENDATIONS OF THE TRIBES.—*

11 *The conditions required under subparagraph (A)*
12 *shall be based on joint recommendations of the*
13 *Tribes.*

14 *(C) RESOLVING INCONSISTENCIES.—*

15 *(i) IN GENERAL.—If the Secretary de-*
16 *termines that any recommendation of the*
17 *Tribes under subparagraph (B) is not rea-*
18 *sonably calculated to ensure the project is*
19 *consistent with subparagraph (A) or is in-*
20 *consistent with the requirements of the Rec-*
21 *lamation Project Act of 1939 (43 U.S.C.*
22 *485 et seq.), the Secretary shall attempt to*
23 *resolve any such inconsistency with the*
24 *Tribes, giving due weight to the rec-*
25 *ommendations and expertise of the Tribes.*

1 (ii) *PUBLICATION OF FINDINGS.*—If,
2 after an attempt to resolve an inconsistency
3 under clause (i), the Secretary does not
4 adopt in whole or in part a recommenda-
5 tion of the Tribes under subparagraph (B),
6 the Secretary shall issue each of the fol-
7 lowing findings, including a statement of
8 the basis for each of the findings:

9 (I) *A finding that adoption of the*
10 *recommendation is inconsistent with*
11 *the requirements of the Reclamation*
12 *Project Act of 1939 (43 U.S.C. 485 et*
13 *seq.).*

14 (II) *A finding that the conditions*
15 *selected by the Secretary to be con-*
16 *tained in the lease of power privilege*
17 *under subparagraph (A) comply with*
18 *the requirements of clauses (i) and (ii)*
19 *of that subparagraph.*

20 (2) *ANNUAL CHARGES PAYABLE BY LICENSEE.*—

21 (A) *IN GENERAL.*—Subject to subparagraph
22 (B), any lease of power privilege issued by the
23 Secretary for a project under subsection (b) shall
24 contain conditions that require the lessee of the
25 project to make direct payments to the Tribes

1 *through reasonable annual charges in an amount*
 2 *that recompenses the Tribes for any adverse eco-*
 3 *nomie effect of the project identified in a study*
 4 *performed pursuant to the study plan agreement*
 5 *for the project.*

6 *(B) AGREEMENT.—*

7 *(i) IN GENERAL.—The amount of the*
 8 *annual charges described in subparagraph*
 9 *(A) shall be established through agreement*
 10 *between the proposed lessee and the Tribes.*

11 *(ii) CONDITION.—The agreement under*
 12 *clause (i), including any modification of the*
 13 *agreement, shall be deemed to be a condition*
 14 *to the lease of power privilege issued by the*
 15 *Secretary for a project under subsection (b).*

16 *(C) DISPUTE RESOLUTION.—*

17 *(i) IN GENERAL.—If the proposed lessee*
 18 *and the Tribes cannot agree to the terms of*
 19 *an agreement under subparagraph (B)(i),*
 20 *the proposed lessee and the Tribes shall sub-*
 21 *mit notice of the dispute to the Director.*

22 *(ii) RESOLUTION.—The Director shall*
 23 *resolve the dispute described in clause (i)*
 24 *not later than 180 days after the date on*

1 *which the Director receives notice of the dis-*
2 *pute under that clause.*

3 (3) *ADDITIONAL CONDITIONS.—The Secretary*
4 *may include in any lease of power privilege issued by*
5 *the Secretary for a project under subsection (b) other*
6 *conditions determined appropriate by the Secretary,*
7 *on the condition that the conditions shall be con-*
8 *sistent with the Reclamation Project Act of 1939 (43*
9 *U.S.C. 485 et seq.).*

10 (4) *CONSULTATION.—In establishing conditions*
11 *under this subsection, the Secretary shall consult with*
12 *the Tribes.*

13 (f) *DEADLINES.—The Secretary or any officer of the*
14 *Office of Hearing and Appeals before whom a proceeding*
15 *is pending under this section may extend any deadline or*
16 *enlarge any timeframe described in this section—*

17 (1) *at the discretion of the Secretary or the offi-*
18 *cer; or*

19 (2) *on a showing of good cause by any party.*

20 (g) *JUDICIAL REVIEW.—Any final action of the Sec-*
21 *retary or the Director made pursuant to this section shall*
22 *be subject to judicial review in accordance with chapter 7*
23 *of title 5, United States Code.*

24 (h) *EFFECT ON OTHER PROJECTS.—Nothing in this*
25 *section establishes any precedent or is binding on any Bu-*

- 1 *reau of Reclamation lease of power privilege, other than for*
- 2 *a project.*

Attest:

Secretary.

115TH CONGRESS
2^D SESSION

H.R. 1967

AMENDMENT